

**IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

**MARVIN L. WHISBY and COMEIKO R.  
WHISBY,**

**Plaintiffs,**

**v.**

**BANK OF AMERICA, NA, PROMMIS  
SOLUTIONS, LLC, and JOHNSON &  
FREEDMAN, LLC**

**Defendants.**

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**CIVIL ACTION NO. 5:12-CV-55 (MTT)**

**ORDER**

Before the Court is Defendant Prommis Solutions' Motion to Dismiss (Doc. 24) and the Plaintiffs' Notice of Voluntary Dismissal (Doc. 26). Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i), "a plaintiff may dismiss an action without a court order by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." No answers have been filed in this action, and there have been no motions for summary judgment. Therefore, the Plaintiffs' Notice of Dismissal is generally valid.

Nevertheless, the Court enters this Order to clarify the proceedings going forward. Given the Plaintiffs' pro se status, the Court construes their Notice as intending to dismiss without prejudice all claims against all defendants *except* for Defendant Bank of America. That is because prior to filing their Notice of Dismissal, the Plaintiffs appealed (Doc. 19) to the Eleventh Circuit this Court's Order (Doc. 18) granting Bank of America's Motion to Dismiss (Doc. 7). Further, the Plaintiffs amended

their Notice of Appeal (Doc. 27) *after* filing their Notice of Dismissal. The Plaintiffs and Bank of America have both briefed the appeal, which Bank of America contends should be dismissed because there has been no final judgment in this case. However, that appeal has yet to be decided. When and if the Eleventh Circuit returns to this Court the Plaintiffs' claims against Bank of America, this Court will enter a ruling regarding dismissal of those claims. Until that time, those claims will not be dismissed.

Therefore, the Plaintiffs' claims against Prommis Solutions and Johnson & Freedman are **dismissed without prejudice**.<sup>1</sup> Prommis Solutions' Motion to Dismiss (Doc. 24) is **denied as moot**. The Court postpones any disposition of the claims against Bank of America pending the outcome of the Plaintiffs' appeal.

**SO ORDERED**, this 26th day of October, 2012.

S/ Marc T. Treadwell  
MARC T. TREADWELL, JUDGE  
UNITED STATES DISTRICT COURT

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<sup>1</sup> However, because their dismissal is noticed pursuant to Fed. R. Civ. P. 41(a)(1), the Plaintiffs are subject to Fed. R. Civ. P. 41(d). That is, if the Plaintiffs later file an action against Prommis Solutions or Johnson & Freedman that is based on or includes the same claims as here, the court in which they file may order the Plaintiffs to pay all or part of the costs of this action and may stay proceedings in the future action until the Plaintiffs so comply.